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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Destiney Rae Montoya,

Defendant.

23-CR-0277-TUC-RCC (JR)

**GOVERNMENT'S SENTENCING
MEMORANDUM**

(Sentencing November 7, 2023)

The United States of America, by and through its undersigned attorneys, files its memorandum in support of U.S. Probation's (USPO) Presentence Report (PSR) guideline calculations of 27-33 months' imprisonment and the subsequent negotiated plea range of 21-27 months' imprisonment. The defendant has two days' time-served thus far. The government incorporates by reference paragraphs 1-42 of the PSR and urges the Court to impose an in-range term of at least 21 months' imprisonment for the following reasons.

The defendant stands before this Court convicted of 8-1324... an all-to-common occurrence in this district. However, she, along with her codefendant, are not typical for this offense. They were coordinators and recruiters. Importantly, their degree of accountability, as measured by their observable terms of punishment, must be commensurate to that level of command if there is any hope to bend the tide of human smuggling in Arizona.

Two years ago, following several tips, agents from the Dept of Homeland Security began monitoring the actions of the two defendants. PSR at ¶¶ 7-8. These tips surfaced by

1 way of numerous leads from street-level smugglers, most often human/alien load drivers,
 2 who provided concrete evidence that their coordinators, their payors and advertisers, were
 3 Montoya and Rivera. PSR at ¶¶ 8-16. The defendant Montoya's email, Snapchat, and cell
 4 phone accounts all ultimately corroborated the vast scope *and longevity* of the alien
 5 smuggling enterprise that she coordinated. This role is critical, for without social media
 6 blitzes spotlighting fast cash there would not be the soaring interest by – and subsequent
 7 availability of – drivers from well beyond southern Arizona. As a result, the community
 8 and law enforcement have become inundated with alien smugglers, enabling the defendant
 9 to rack up tens of thousands in illegal profits and delivering scores of smuggled aliens
 10 further into the United States. *Id.*

11 This recounting is not to discourage the Court from embracing the plea, for the
 12 agreement sufficiently contemplates the sweeping breadth of the defendant's enterprise.
 13 Rather, these points are emphasized to urge the Court to set the defendant's accountability
 14 (appropriately) above and apart from "ordinary" 8-1324 offenders, apart from those who
 15 are mere drivers or pawns, and thereby within the plea's range. The applicable Guidelines
 16 do sufficiently account for such aggravating responsibility and a defendant who is thus
 17 situated, warrants the Congressionally elevated accountability that the Guidelines intend to
 18 mete out. As the relevant Guideline section endeavors to explain:

19 [Role enhancement] is included primarily because of concerns about *relative*
 20 *responsibility*. However, it is also likely that persons who exercise a supervisory or
 21 managerial role in the commission of an offense tend to profit more from it and
 22 present a greater danger to the public...

23 USSG § 3B1.1 (Commentary; Background) (*emphasis added*)

24 Keeping within the defendant's Guidelines not only serves to distinguish higher ranking
 25 participants but will send the message to other black-market organizers and solicitors that
 26 their culpability is in fact greater.

27 For these distinct reasons, the government asks this Honorable Court to impose a
 28

1 sentence that lies within the negotiated range of 21-27 months' imprisonment, followed by
2 a supervisory term of 36 months. It will help to discourage others from "climbing" the
3 alien-smuggling ladder as well as facilitate the reintegration of the defendant into a fully
4 law-abiding lifestyle.

5 Respectfully submitted this 30th day of October, 2023.

6 GARY M. RESTAINO
7 United States Attorney
8 District of Arizona

9 *s/ Micah Schmit*

10 MICAH SCHMIT
11 Assistant U.S. Attorney

12 Copy of the foregoing served electronically or by
13 other means this 30th day of October, 2023, to:

14 All ECF participants
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